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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

SOUTH CENTRAL REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Thomas L. Henderson
Regional Director

June 18, 2007

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO BMC ROCK, INC. REGISTRATION NUMBER 32044

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §1300 *et seq.* and 10.1-1185 between the State Air Pollution Control Board and BMC Rock, Inc for the purpose of resolving certain violations of Condition 15 of BMC Rock, Inc New Source Review Permit dated June 9, 2005 and 40 CFR 60 Subpart OOO.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia described in § 10.1-1301 and § 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

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5. “NSPS OOO” means 40 CFR 60 Subpart OOO – Standards of Performance for Nonmetallic Mineral Processing Plants.
6. “Order” means this document, also known as a Consent Order.
7. “Facility” or “Source” means BMC Rock, Inc located on 301 Sunrise Lane Drakes Branch, Virginia.
8. “Regulations” means the State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution, which have been incorporated into Title 9 of the Virginia Administrative Code (VAC).
9. “SCRO” means the South Central Regional Office located in Lynchburg, Virginia.
10. “BMC” means BMC Rock, Inc located on 301 Sunrise Lane Drakes Branch, Virginia.

SECTION C: Findings of Fact and Conclusions of Law

1. BMC is a nonmetallic mineral processing plant subject to NSPS OOO. A New Source Review permit to construct and operate a nonmetallic mineral processing plant was issued to the source on June 9, 2005. It was reported that the facility started operating at full capacity on August 29, 2005.
2. On March 13, 2007, BMC submitted an Annual Update Report for 2006 which reported the operation of an additional crushed rock screen. Source reported the start-up date of the new screen and diesel engine as June 9, 2006. As of that date, the facility was operating three screens. The New Source Review permit allows the construction and operation of two screens.
3. An on-site inspection was conducted on April 17, 2007. During the inspection, three screens were on-site and the source had not performed any of the initial performance tests required by NSPS OOO. A follow-up visit was conducted on April 23, 2007, during which, DEQ inspector performed the initial performance test on the jaw crusher, secondary crusher, secondary crusher unit transfer points, and the primary screening unit.
4. A Notice of Alleged Violation – ASCRO5825 was issued to the source on May 3, 2007 which addresses the above observations.
5. Following a site visit conducted on June 11, 2007 and a review of the original permit application, it was concluded that the source had reported all of the on-site equipment (or

equivalent) in the original permit application. The secondary cone crusher unit included a screening unit which was reported by the source in the permit application but not evaluated for emission calculations or put into the equipment list of the New Source Review permit.

6. SCRO concluded that the source notified the DEQ of all equipment on-site during the application process for the New Source Review permit dated June 9, 2005, and as such BMC was not in violation of constructing and operating equipment prior to obtaining the proper permit.
7. Permit condition 15 of the facility NSR permit dated June 9, 2005 states:
“Visible Emission Evaluations (VEE) in accordance with 40 CFR Part 60, Appendix A, Method 9, shall be conducted by the permittee on the NSPS equipment identified in Condition 2. The details of the tests are to be arranged with the South Central Regional Office. The permittee shall submit a test protocol at least 30 days prior to testing. The evaluation shall be performed and reported within 60 days after achieving the maximum production rate at which the facility will be operated but in no event later than 180 days after start-up of the permitted facility. One copy of the test result shall be submitted to the South Central Regional Office within 45 days after test completion and one copy shall be submitted to EPA Region III at the address in Condition 19 within 45 days after test completion.
(9 VAC 5-50-30, 9 VAC 5-80-1200, and 9 VAC 5-50-410)”
8. Permit Condition 16 of the facility NSR permit dated June 9, 2005 states:
“Visible Emission Evaluations required, in Condition 15, on the conveyor transfers and screens may be reduced to ten (10) sets of twenty-four (24) consecutive observations (at fifteen (15) second intervals) to yield a six (6) minute average if: a. There are no individual readings greater than ten (10) percent opacity for the conveyor transfers or screens, and b. There are no more than three (3) readings of ten (10) percent opacity for the one (1) hour period for the conveyor transfers or screens.
(9 VAC 5-80-1200, 40 CFR 60.675 (C)(3), and 9 VAC 5-50-410)”
9. Permit Condition 17 of the facility NSR permit dated June 9, 2005 states:
“Visible Emission Evaluations required, in Condition 15, on the primary and secondary crusher may be reduced to ten (10) sets of twenty-four (24) consecutive observations (at fifteen (15) second intervals) to yield a six (6) minute average if: a. There are no individual readings greater than fifteen (15) percent opacity for the conveyor transfers or screens, and b. There are

no more than three (3) readings of fifteen (15) percent opacity for the one (1) hour period for the primary and secondary crusher.
(9 VAC 5-80-1200, 40 CFR 60.675 (C)(4), and 9 VAC 5-50-410)”

10. 40 CFR 60.675(a) states:

“In conducting the performance tests required in §60.8, the owner or operator shall use as reference methods and procedures the test methods in appendix A of this part or other methods and procedures as specified in this section, except as provided in §60.8(b). Acceptable alternative methods and procedures are given in paragraph (e) of this section.”

11. 40 CFR 60.8 (a) states:

“Within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility and at such other times as may be required by the Administrator under section 114 of the Act, the owner or operator of such facility shall conduct performance test(s) and furnish the Administrator a written report of the results of such performance test(s).”

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1307 (D), 10.1-1309, 10.1-1184, and 10.1-1316 (C), orders BMC and BMC agrees that:

1. BMC Rock, Inc shall pay a civil charge of \$3,888.00 for the violations described in Section C of this order.
2. BMC shall make a payment of \$3,888.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the “Treasurer of Virginia,” delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

3. BMC shall include its registration number given by the DEQ with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order.
4. Within 180 days from start-up of the Powerscreen Horizon Model 6203 mobile screening plant, the source shall conduct initial performance testing on the Extec screen and the Powerscreen Horizon Model 6203 mobile screening plant as required by NSPS OOO and the facility permit.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this agreement with the consent of BMC for good cause shown by BMC on its own motion after notice and an opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Alleged Violation issued to BMC by DEQ on April 30, 2007. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, BMC admits the jurisdictional allegations, factual findings and conclusions of law contained herein.
4. BMC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this order.
5. BMC declares it has received fair and due process under the Administrative Process Act, Va. Code § 2.2 4000 *et seq.*, and the State Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by BMC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. BMC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, war, strike, or such other occurrence. BMC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part.

BMC shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

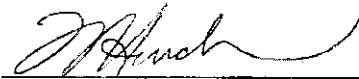
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and BMC. Notwithstanding the foregoing, BMC agrees to be bound by any compliance date which precedes the effective date of the Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to BMC. Termination of this

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Order, or any obligation imposed in this Order, shall not operate to relieve BMC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, BMC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of July 10, 2007.



Thomas L. Henderson, Regional Director
Department of Environmental Quality

BMC voluntarily agrees to the issuance of this Order.

By: Beverly J. Kunath

Date: 7-09-07

Commonwealth of Virginia City/County of Charlotte

The foregoing instrument was acknowledged before me this 9th day of

July, 2007, by BEVERLY T. KUNATH,
(name)

who is SECRETARY of BMC ^{Rock} Publication USA, Inc.

Linda W Adams

Notary Public

My commission expires 02-28-2011

